

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x 12-CV-02858 (VB)

JACOB TEITELBAUM, Individually and as father to
CHILD A and CHILD B,

Plaintiff,

-against-

**ATTORNEY
DECLARATION**

JUDA KATZ; CHAYA KATZ; JOEL TENNENBAUM;
BLUMA TENNENBAUM; DAVID RUBENSTEIN;
KIRYAS JOEL COMM AMBULANCE CRP; DISTRICT
FAMILY COURT OF ORANGE COUNTY 9TH JUDICIAL
DISTRICT; HON. ANDREW P. BIVONA; ATTY. MARIA
PETRIZIO; CHILDREN’S RIGHTS SOCIETY OF
ORANGE COUNTY; ATTY. KIM PAVLOVIC; ATTY
JOHN FRANCIS X. BURKE; CHILD PROTECTIVE
SERVICES OF ORANGE COUNTY; DEPARTMENT OF
SOCIAL SERVICES OF ORANGE COUNTY; CHRISTINE
BRUNET; ATTY. STEPHANIE BAZILEOR; JOHN DOES 1
THROUGH 95; JANE DOES 1 THROUGH 20,

Return Date: May 29, 2013

Defendants.

-----x

JEFFREY B. SILER, an attorney duly admitted to practice law before the United States District Court for the Southern District of New York, declares the following to be true and correct under penalties of perjury pursuant to 28 U.S.C. § 1746:

1. I am a partner in the Law firm of SILER & INGBER, LLP, the attorneys for Defendant, KIRYAS JOEL COMMUNITY AMBULANCE CORPORATION s/h/a KIRYAS JOEL COMM AMBULANCE CRP, (hereinafter “defendant”). I am fully familiar with the prior proceedings and papers filed in this action.

2. I submit this Declaration in support of defendant’s motion to dismiss, and in opposition to plaintiff’s motion to amend and supplement the complaint pursuant to Fed. R. Civ. P. 15(b)(2), Fed. R. Civ. P. 15(d) and Fed. R. Civ. P. 12(b)(6). Defendant submits that plaintiff

has failed to allege sufficient facts to support a Section 1983 or 1985 claim against him in accordance with this Court's order of February 11, 2013, and requests that this Court dismiss the complaint with prejudice, together with any such other and further relief as this Court deems just and proper.

3. The facts underlying plaintiff's claims were fully set forth in this Court's order dated February 11, 2013 and in defendant's motion to dismiss, which was filed on December 18, 2012. Accordingly, a brief recitation of the relevant facts is set forth in the accompanying memorandum of law.

4. The relevant procedural history is as follows. Upon information and belief, plaintiff commenced this action individually and on behalf of his two children against defendant and others alleging claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1985. On December 18, 2012, defendant moved pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6) on the grounds that he is not a state actor for purposes of liability under 42 U.S.C. § 1983 and that plaintiff failed to state a claim of conspiracy under 42 U.S.C. § 1983 or 42 U.S.C. § 1985. On February 11, 2013, this Court granted the motions of defendant and several codefendants. In so doing, this Court granted plaintiff leave to file a second amended complaint "for the sole purpose of alleging sufficient facts to support a Section 1983 or 1985 claim against Kiryas Joel EMS and/or Rubenstein."

5. On May 6, 2013, plaintiff filed what amounts to a motion for leave to serve a second amended complaint against all defendants. Defendant now opposes that motion, and asserts that plaintiff has failed to allege facts sufficient to support his Section 1983 and 1985 claims against defendant in conformance with this Court's order.

THIS COURT SHOULD DISMISS PLAINTIFF'S CAUSES OF ACTION UNDER 42 U.S.C. § 1983 AND 42 U.S.C. § 1985 WITH PREJUDICE.

6. Although plaintiff contends that this Court should allow him to amend and supplement his first amended complaint – and has provided this Court with a copy of his proposed second amended complaint – this Court previously granted plaintiff leave with respect to his Section 1983 and 1985 claims, only.

7. Preliminarily, it should be noted that plaintiff's reliance on Fed. R. Civ. P. 15(b)(2) is of no moment here, given that no trial has occurred in this action.

8. As explained in the accompanying memorandum of law, a court may deny a motion to supplement a complaint pursuant to Fed. R. Civ. P. 15(d) based on undue delay, bad faith, dilatory tactics, undue prejudice to the party to be served with the proposed pleading, or futility of the proposed pleading.

9. In this case, the allegations contained in plaintiff's proposed second amended complaint in regard to his Section 1983 and 1985 claims are virtually identical to those contained in the first amended complaint that was the subject of this Court's February 2013 order. The only new allegations with respect to those claims are that all of the defendants have impermissibly "influenc[ed] the judicial system" (Second Amended Complaint, at ¶ 385, 402).

10. Even assuming the truth of these new allegations, such allegations fail to demonstrate that defendant was a state actor for purposes of Section 1983. These allegations similarly fail to demonstrate that defendant was motivated by "invidious discriminatory animus" to deprive plaintiff of his constitutional rights for purposes of Section 1985.

11. This Court foresaw the apparent futility of plaintiff's efforts to assert any cognizable claim against defendant at page 12 of its February 2013 decision, when it noted: "it appears unlikely that plaintiff can sufficiently plead a Section 1983 claim against Kiryas Joel

EMS or Rubenstein by further amending his complaint.” Indeed, plaintiff’s proposed Second Amended Complaint fails to allege any new facts sufficient to state a Section 1983 or 1985 claim against defendant.

12. Upon information and belief, plaintiff, his wife, other family members, and local authorities such as the Department of Social Services requested the services of an ambulance and crew on several occasions. Defendant was a member of Hatzalah EMS, one such ambulance crew. Plaintiff has not offered any authority in support of the proposition that a member of a volunteer ambulance company may disregard a lawful command from local authorities with respect to being dispatched to plaintiff’s residence. Moreover, even if such authority existed, there is no evidence here that defendant caused plaintiff injury within the meaning of the statute or was grossly negligent in the fulfillment of his duties.

13. To the extent that the proposed second amended complaint seeks to reassert causes of action sounding in intentional infliction of emotional distress, this Court already dismissed that cause of action as against defendant. Accordingly, defendant submits that this Court should deny plaintiff’s motion as being futile in that regard.


14. To the extent that plaintiff now seeks to assert causes of action against defendant for wrongful eviction, false arrest, abuse of process, and cruel and inhuman treatment, defendant submits that such claims are similarly futile based upon the facts alleged – which are nearly identical to those previously advanced by plaintiff – as well as the case law cited in defendant’s motion to dismiss. Moreover, such new claims clearly fall outside the scope of leave granted to plaintiff by this Court in February 2013 with respect to Sections 1983 and 1985.

WHEREFORE, your deponent respectfully requests that that this Court should deny plaintiff’s motion to amend and supplement his complaint and dismiss the complaint in its

entirety as against defendant with prejudice, together with any other and further relief as it deems just and proper under the circumstances.

Dated: Mineola, New York
May 10, 2013

SILER & INGBER, LLP

By: 

Jeffrey B. Siler (JS4755)

Attorney for Defendant

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